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SOL (MSHA) v. SOHIO ELECTRO MINERALS
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. CENT 85-108-M
A.C. No. 16-00995-05504

v.

Proppant Plant

SOHIO ELECTRO MINERALS CO.,
RESPONDENT

DECISION

Before: Judge Broderick

On December 9, 1984, the parties filed a joint motion for decision on the record, and agreed to waive their rights to a hearing.

Respondent does not deny that the violation charged in the citation involved herein occurred. The parties submit that the only issue before me for resolution is the appropriate penalty for the violation.

The citation charged a violation of the mandatory safety standard contained in 30 C.F.R. 56.14-1, because the tail pulley for the main truck loadout conveyor was not guarded. A walkway next to the tail pulley was used by maintenance employees, but "is a very low travel area and the conveyor is only run intermittently with very little employee exposure." A CAV inspection in 1982 and four follow up MSHA inspections of the same equipment did not result in citations, nor was Respondent notified that the unguarded pulley was a violation. The citation involved herein was abated the same day it was issued. The inspector believed that Respondent's negligence in permitting the violation was low. He concluded that the occurrence of the event against which the cited standard is directed was reasonably likely to occur and the injury resulting from the occurrence could reasonably be expected to be fatal.

Respondent is of moderate size, and has a favorable history of prior violations. The violation was moderately serious. Even though few employees were exposed, the injury which could result was expected to be serious. The prior

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inspections tend to diminish the factor of negligence. I conclude that Respondent's negligence was minimal. It abated the condition promptly and in good faith.

I conclude that based on the criteria in section 110(i) of the Act, an appropriate penalty for the violation is \$100.00 which I will reduce by 10% for prompt, good faith abatement.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED that citation 2239899 issued May 9, 1985, IS AFFIRMED.

IT IS FURTHER ORDERED that Respondent shall within 30 days of the date of this decision pay the sum of \$90.00 as a civil penalty for the violation found herein.

James A. Broderick
Administrative Law Judge